

Sep 16, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

REBECCA H. O/B/O A.R., A MINOR
CHILD,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,²

Defendant.

No. 1:18-cv-03210-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 14, 16

BEFORE THE COURT are the parties' cross-motions for summary
judgment. ECF Nos. 14, 16. The Court, having reviewed the administrative

¹ To protect the privacy of plaintiffs in social security cases, the undersigned
identifies them by only their first names and the initial of their last names.

² Andrew M. Saul is now the Commissioner of the Social Security Administration.
Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs
the Clerk to update the docket sheet. *See* Fed. R. Civ. P. 25(d).

1 record and the parties' briefing, is fully informed. For the reasons discussed
2 below, Plaintiff's Motion, ECF No. 14, is denied and Defendant's Motion, ECF
3 No. 16, is granted.

4 **JURISDICTION**

5 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited; the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
13 (quotation and citation omitted). Stated differently, substantial evidence equates to
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
15 citation omitted). In determining whether the standard has been satisfied, a
16 reviewing court must consider the entire record as a whole rather than searching
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **THREE-STEP PROCESS FOR CHILDHOOD DISABILITY**

10 To qualify for Title XVI supplement security income benefits, a child under
11 the age of eighteen must have "a medically determinable physical or mental
12 impairment, which results in marked and severe functional limitations, and which
13 can be expected to result in death or which has lasted or can be expected to last for
14 a continuous period of not less than 12 months." 42 U.S.C. § 1382c(a)(3)(C)(i).
15 The regulations provide a three-step process to determine whether a claimant
16 satisfies the above criteria. 20 C.F.R. § 416.924(a). First, the administrative law
17 judge (ALJ) must determine whether the child is engaged in substantial gainful
18 activity. 20 C.F.R. § 416.924(b). Second, the ALJ considers whether the child has
19 a "medically determinable impairment that is severe," which is defined as an
20 impairment that causes "more than minimal functional limitations." 20 C.F.R. §

1 416.924(c). Finally, if the ALJ finds a severe impairment, the ALJ must then
2 consider whether the impairment meets, “medically equals” or “functionally
3 equals” a disability listed in the “Listing of Impairments” (listings). 20 C.F.R. §
4 416.924(c)-(d).

5 If the ALJ finds that the child’s impairment or combination of impairments
6 does not meet or medically equal a listing, the ALJ must determine whether the
7 impairment or combination of impairments functionally equals a listing. 20 C.F.R.
8 § 416.926a(a) (2017). The ALJ’s functional equivalence assessment requires the
9 ALJ to evaluate the child’s functioning in six “domains.” These six domains,
10 which are designed “to capture all of what a child can or cannot do,” are as
11 follows:

- 12 (1) Acquiring and using information:
- 13 (2) Attending and completing tasks;
- 14 (3) Interacting and relating with others;
- 15 (4) Moving about and manipulating objects;
- 16 (5) Caring for self; and
- 17 (6) Health and physical well-being.

18 20 C.F.R. § 416.926a(b)(1)(i)-(vi) (2017). A child’s impairment will be deemed to
19 functionally equal a listed impairment if the child’s condition results in a “marked”
20 limitations in two domains, or an “extreme” limitation in one domain. 20 C.F.R. §

1 416.926a(a) (2017). An impairment is a “marked limitation” if it “interferes
2 seriously with [a person’s] ability to independently initiate, sustain, or complete
3 activities.” 20 C.F.R. § 416.926a(e)(2)(i) (2017). By contrast, an “extreme
4 limitation” is defined as a limitation that “interferes very seriously with [a
5 person’s] ability to independently initiate, sustain, or complete activities.” 20
6 C.F.R. § 416.926a(e)(3)(i) (2017).

7 **ALJ’S FINDINGS**

8 On May 2, 2014, Plaintiff filed an application on behalf of her minor
9 custodial child’s³ behalf for supplemental security income (SSI) under Title XVI of
10 the Social Security Act alleging disability as of April 1, 2014. Tr. 214-19. The
11 application was denied initially, Tr. 77-79, and upon reconsideration. Tr. 83-85.
12 Plaintiff’s mother appeared for a hearing before an ALJ on September 7, 2017. Tr.
13 34-58. On September 22, 2017, the ALJ denied Plaintiff’s claims. Tr. 12-33.

14 The ALJ noted that Plaintiff was a school-age child on the date his
15 application was filed and at the time of the hearing. Tr. 18. At step one, the ALJ
16 found Plaintiff has not engaged in substantial gainful activity since May 2, 2014.
17 *Id.* At step two, the ALJ found that Plaintiff has the following severe impairments:

18
19 ³ The remainder of this opinion will refer to the minor seeking benefits as the
20 Plaintiff.

1 posttraumatic stress disorder (PTSD), anxiety disorder, depressive disorder, and
2 attention deficit hyperactivity disorder (ADHD). *Id.* At step three, the ALJ found
3 that Plaintiff does not have an impairment or combination of impairments that
4 meets or medically equals the severity of a listed impairment. *Id.* With regard to
5 functional equivalence, the ALJ concluded that Plaintiff does not have an
6 “extreme” limitation in any domain of functioning or a “marked” limitation in two
7 domains. Tr. 19-28. As a result, the ALJ concluded that Plaintiff has not been
8 disabled, as defined in the Social Security Act, since May 2, 2014, the date the
9 application was filed. Tr. 28.

10 On August 31, 2018, the Appeals Counsel denied review, Tr. 1-6, making
11 the ALJ’s decision the Commissioner’s final decision for purposes of judicial
12 review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

13 ISSUES

14 Plaintiff seeks judicial review of the Commissioner’s final decision denying
15 his supplemental security income benefits under Title XVI of the Social Security
16 Act. ECF No. 14. Plaintiff raises the following issues for this Court’s review:

- 17 1. Whether the ALJ properly evaluated the lay testimony;
- 18 2. Whether the ALJ properly determined Plaintiff’s impairments did not
19 functionally equal a listing.

20 ECF No. 14 at 8.

DISCUSSION

A. Lay Testimony

Plaintiff contends the ALJ improperly evaluated the testimony of Plaintiff's mother, Rebeca H. (Ms. H). ECF No. 14 at 10-12.

An ALJ must consider the statement of lay witnesses in determining whether a claimant is disabled. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006). Lay witness evidence cannot establish the existence of medically determinable impairments, but lay witness evidence is "competent evidence." *Id.*; 20 C.F.R. § 416.913; *see also Dodrill v. Shalala*, 12 F.3d 915, 918-19 (9th Cir. 1993) ("[F]riends and family members in a position to observe a claimant's symptoms and daily activities are competent to testify as to her condition."). If a lay witness statement is rejected, the ALJ "must give reasons that are germane to each witness." *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (citing *Dodrill*, 12 F.3d at 919).

Here, Ms. H, testified regarding Plaintiff's symptoms and limitations. Tr. 42-57. Specifically, she testified that Plaintiff has ongoing hallucinations and anxiety, Tr. 47, 54, 55; has difficulty with other kids, in part because he talks to himself, and he does not like going to school, Tr. 42; he has hallucinated a little girl since he was four years old, Tr. 47; he cannot independently use the restroom, nor dress himself, Tr. 53; and he has had multiple incidences where he has

1 screamed, cried, or run away in public, as well as nights where he screams and
2 thrashes around in his sleep, Tr. 44, 51, 55. She testified Plaintiff has had
3 improvement with medication and has made a friend at school. Tr. 45, 47.

4 Ms. H also completed a function report in June of 2014, in which she stated
5 Plaintiff has trouble speaking clearly and can only be understood some of the time;
6 has limitations in his reading, math and writing skills and cannot tell time; had
7 improvement in his ability to focus when he began taking medication; and does not
8 have friends, cannot make friends and does not handle his self-care. Tr. 226-35.
9 The ALJ gave limited weight to Ms. H's statements. Tr. 20-21.

10 First, the ALJ found that the medical and academic evidence did not
11 substantiate Ms. H's allegations of disabling limitations. Tr. 20. An ALJ may not
12 discredit a claimant's symptom testimony and deny benefits solely because the
13 degree of the symptoms alleged is not supported by objective medical evidence.
14 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947
15 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir.
16 1989); *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). However, the
17 objective medical evidence is a relevant factor, along with the medical source's
18 information about the claimant's pain or other symptoms, in determining the
19 severity of a claimant's symptoms and their disabling effects. *Rollins*, 261 F.3d at
20 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2). Minimal objective evidence is a

1 factor which may be relied upon in discrediting a claimant's testimony, although it
2 may not be the only factor. *See Burch*, 400 F.3d at 680. An ALJ also may
3 consider good academic performance as an activity that is inconsistent with a
4 claimant's reported functioning. *See Anderson v. Astrue*, No. 09-CV-220-JPH,
5 2010 WL 2854241, at *6 (E.D. Wash. July 19, 2010); *Payton v. Comm'r of Soc.*
6 *Sec.*, No. CIV S-09-0879-CMK, 2010 WL 3835732, at *10 (E.D. Cal. Sept. 29,
7 2010); *see also Spittle v. Astrue*, No. 3:11-CV-00711-AA, 2012 WL 4508003, at
8 *3 (D. Or. Sept. 25, 2012).

9 The ALJ noted exams where plaintiff had intact memory and attention, was
10 calm and cooperative and reported improvement. Tr. 21, 372, 374, 376-77, 379-
11 80, 382. At multiple visits, Plaintiff and Ms. H did not report any hallucinations or
12 anxiety. Tr. 20. Plaintiff saw improvement with treatment and did not have any
13 treatment from October 2015 through January 2017. Tr. 21, 367-68, 373-74. This
14 was a germane reason to give limited weight to Ms. H's testimony.

15 Second, the ALJ found that Ms. H's claims of disabling limitations were
16 inconsistent with Plaintiff's record of improvement with treatment. Tr. 20-21. The
17 effectiveness of treatment is a relevant factor in determining the severity of a
18 claimant's symptoms. 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) (2011); *Warre*
19 *v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (determining
20 that conditions effectively controlled with medication are not disabling for

1 purposes of determining eligibility for benefits); *Tommasetti v. Astrue*, 533 F.3d
2 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response to treatment can
3 undermine a claimant's complaints of debilitating pain or other severe limitations).

4 The ALJ cited to evidence that demonstrated significant improvement with
5 medication, including Plaintiff's parents own reports of improvement. Tr. 20-21,
6 338-39, 352. The record indicates that Plaintiff's limitations improved to the point
7 of no longer qualifying for special education services, which is also demonstrative
8 of improvement. Tr. 303. Moreover, records indicated Plaintiff's teachers noticed
9 he was paying attention better during the school day. Tr. 339.

10 Plaintiff argues that while there was some improvement with treatment, he
11 continued having "significant symptoms on a regular basis." ECF No. 14 at 10.
12 Plaintiff argues there are records demonstrating Plaintiff had ongoing
13 hallucinations and limitations such as decreased judgment and insight. ECF No.
14 14 at 11. However, Plaintiff does not point to any limitations caused by decreased
15 judgment and insight nor any objective evidence of limitations caused by
16 hallucinations. Where the ALJ's interpretation of the record is reasonable as it is
17 here, it should not be second-guessed. *Rollins*, 261 F.3d at 857. The Court must
18 consider the ALJ's decision in the context of "the entire record as a whole," and if
19 the "evidence is susceptible to more than one rational interpretation, the ALJ's
20 decision should be upheld." *Ryan v. Comm'r of Soc. Sec. Admin.*, 528 F.3d 1194,

1 1198 (9th Cir. 2008) (internal quotation marks omitted). This was a germane
2 reason to give limited weight to Ms. H's testimony.

3 Third, the ALJ found that the allegations of disabling limitations were
4 inconsistent with the failure to seek treatment from October 2015 to January 2017.
5 Tr. 21. An unexplained, or inadequately explained, failure to seek treatment or
6 follow a prescribed course of treatment may be considered when evaluating the
7 claimant's subjective symptoms. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007).
8 The ALJ reasoned that Plaintiff's lack of treatment from October 2015 through
9 January 2017 suggested Plaintiff's symptoms did not warrant treatment during that
10 time. Tr. 21. Plaintiff argues the gap in the records from October 2015 through
11 January of 2017 was due only to Plaintiff being on a waitlist for treatment. ECF
12 No. 14 at 11. However, Plaintiff offers no explanation as to why no other
13 treatment was sought during that time period. This was a germane reason to give
14 limited weight to Ms. H's statements.

15 Fourth, the ALJ found that Ms. H made inconsistent statements. Tr. 21. In
16 evaluating a claimant's symptom claims, an ALJ may consider the consistency of
17 an individual's own statements made in connection with the disability review
18 process with any other existing statements or conduct made under other
19 circumstances. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996); *Thomas v.*
20 *Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

1 The ALJ noted specific contradictions between Ms. H's testimony and the
2 evidence. Tr. 22. Plaintiff asserts that there was no contradiction in Ms. H's report
3 because while she stated in June 2014 that Plaintiff could not engage in self-care
4 activities, he learned how to by December 2014, which she reported. ECF No. 17
5 at 2-3. However, Plaintiff offers no explanation as to why Ms. H testified at the
6 hearing that Plaintiff was still unable to handle self-care tasks, and how that is
7 consistent with the December 2014 report. *See* Tr. 55. While Plaintiff offers an
8 alternative interpretation of the evidence, this is not sufficient to overturn the
9 ALJ's decision.

10 There are examples throughout the record of Ms. H's statements being
11 inconsistent with the record. Ms. H reported for the May 19, 2014 evaluation that
12 Plaintiff had been diagnosed with ADHD and was on medication. Tr. 303.
13 However, she did not provide any documentation. *Id.* Plaintiff was not diagnosed
14 with ADHD and begun on medication until May 20, 2014. Tr. 316. She reported
15 to a provider that Plaintiff was diagnosed with oppositional defiant disorder, but
16 the provider noted that he reviewed the records and found no such diagnosis. Tr.
17 332. Ms. H reported Plaintiff has difficulty with his speech, making him hard to
18 understand at times, Tr. 228, but Plaintiff's teacher reported no issues with
19 understanding him. Tr. 309.

1 At the hearing, Ms. H testified Plaintiff has had hallucinations of a girl since
2 he was four years old. Tr. 47. There is no documentation of such hallucinations in
3 the records. Plaintiff reported to a provider that his brother has hallucinations of a
4 small girl. Tr. 358. Ms. H testified regarding Plaintiff screaming and crying in
5 public. Tr. 44. However, she reported to a provider that medication had helped
6 and his tantrums/crying mainly happened when he did not want to do his chores.
7 Tr. 339. Ms. H reported Plaintiff has issues with math, reading and writing, and he
8 could not tell time in 2014. Tr. 230. The 2014 evaluation indicates Plaintiff had
9 scores within the average range in those subjects and was able to tell time. Tr. 308.
10 Ms. H reported Plaintiff has difficulties interacting with others and making friends,
11 but she also testified he has made a friend, and the records indicate Plaintiff “is
12 sociable and gets along with other kids.” Tr. 47, 322.

13 The ALJ gave germane reasons for rejecting Ms. H’s testimony, which are
14 supported by substantial evidence. The Court may not reverse the ALJ’s decision
15 based on Plaintiff’s disagreement with the ALJ’s interpretation of the record. *See*
16 *Tommasetti*, 533 F.3d at 1038 (“[W]hen the evidence is susceptible to more than
17 one rational interpretation” the court will not reverse the ALJ’s decision).

18 **B. Functional Equivalence**

19 Plaintiff challenges the ALJ’s conclusion that Plaintiff’s impairments do not
20 functionally equal a Listing. ECF No. 14 at 12-15. Specifically, Plaintiff contends

1 the ALJ should have found Plaintiff had marked limitations in the domain of
2 attending and completing tasks. *Id.*

3 In evaluating the attending and completing tasks domain, the ALJ considers
4 how well the child is able to focus and maintain attention, and how well the child
5 can begin, carry through, and finish activities, including the pace at which
6 activities are performed and the ease with which the child changes activities. 20
7 C.F.R. § 416.926a(h). A child would be found to have a “marked” limitation in
8 this domain if their limitation interferes seriously with their ability to
9 independently initiate, sustain, and/or complete activities. 20 C.F.R. §
10 416.926a(e)(2)(i) (2017). Here, the ALJ found Plaintiff had less than marked
11 limitations in this domain. Tr. 24.

12 The ALJ recognized that although Plaintiff had some struggles, the ALJ
13 concluded that after Plaintiff began medications, his function substantially
14 improved. Tr. 24. The ALJ reasoned that while a May 2014 evaluation found
15 Plaintiff needed additional time to complete assignments and tests, Plaintiff’s
16 teacher opined in October 2014 that Plaintiff generally had no problem to a slight
17 problem in this domain. *Id.* In December 2014, Plaintiff was observed as being
18 more in control and having better attention due to his medications. *Id.* The ALJ

1 noted the records demonstrated Plaintiff's attention was described as intact or fair,
2 and while he was distracted by toys, he was able to engage when necessary. *Id.*

3 Plaintiff argues the ALJ did not properly consider limitations caused by his
4 impairments other than ADHD. ECF No. 14 at 14. Plaintiff asserts that his
5 hallucinations and panic attacks occurred more than weekly, and those symptoms,
6 along with his ADHD symptoms, caused marked limitations in this domain. ECF
7 No. 14 at 14-15. According to Plaintiff, a child with his "significant distractions,"
8 including hallucinations and panic attacks, cannot be found to be able to
9 concentrate or attend to tasks at a satisfactory level. ECF No. 14 at 15. Plaintiff
10 does not cite to any evidence in support of the argument that the reported
11 symptoms cause impairment in concentration or attending to tasks.

12 The ALJ reasoned that Plaintiff's functioning improved after he began
13 medications in May of 2014. Tr. 24. The records do not demonstrate the level of
14 alleged significant issues, after Plaintiff began medications. His ADHD symptoms
15 were noted as controlled by medication. *Id.*, Tr. 229, 314, 338-39. After he was
16 on medication, his teachers observed he had no problem to a slight problem in this
17 domain, and he was able to function in general education classes. *Id.*, Tr. 254, 338.

18 The Court further notes that in the years leading up to the protective filing
19 date, there is minimal evidence related to Plaintiff's functioning. In October of
20 2012, Ms. H reported Plaintiff was having difficulty in school. Tr. 332. His

1 mother was given the Vanderbilt assessment to complete and return; however,
2 there is no indication the forms were completed nor that there was any follow up.

3 *Id.*

4 A letter and questionnaire from Plaintiff's teachers in March and April of
5 2014 indicate a belief that Plaintiff had difficulty with concentration and
6 hyperactivity and that he would benefit from medication. Tr. 223, 319. In April of
7 2014, Ms. H completed the Vanderbilt assessment. Tr. 321. She reported
8 Plaintiff's school performance, reading and writing performing were all "average".
9 *Id.* His math performance was "somewhat of a problem." *Id.*

10 In May of 2014, Plaintiff's elementary school determined he no longer
11 qualified for special education services. Tr. 307. In making the determination,
12 Plaintiff was administered several tests; he generally scored in the average range.
13 Tr. 304-05. While there was a note that Plaintiff required more time to complete
14 tasks, no other difficulties with focus or completing the testing were noted. Tr.
15 308. Based on the evaluation, it was recommended Plaintiff receive extra time on
16 assignments, tests and quizzes when possible, to sit in a less trafficked area and to
17 receive breaks. Tr. 305.

18 In October of 2014, Plaintiff's teacher completed a questionnaire regarding
19 his functioning, Tr. 252-59, and noted Plaintiff had no problem to a slight problem
20 in most activities within the "attending and completing tasks" domain. Tr. 254.

1 Only “focusing long enough to finish assigned activity or task” was labeled an
2 “obvious problem.” *Id.*

3 In December of 2014, records from the Children’s Village indicate Plaintiff
4 “has made great progress with his behaviors” since starting Concerta, and he has
5 been “successful in general education.” Tr. 338. He was observed as sitting
6 calmly, coloring, answering questions appropriately and being pleasant and
7 cooperative. Tr. 343. At that visit, Ms. H reported for the first time that Plaintiff
8 had two episodes where he saw bugs that others could not see, or he felt bugs on
9 his skin. Tr. 339. However, she stated there had been no further reports since he
10 began medication for ADHD. *Id.* She reported he also feared candy as he thought
11 it would cause monsters in his teeth. *Id.* The provider recommended Plaintiff seek
12 counseling or behavior therapy if his anxiety increased. Tr. 343. There is no
13 indication of any follow up until May of 2015.

14 In May of 2015, Plaintiff reported seeing bugs and that he thought aliens
15 were trying to do things to him. Tr. 358. Plaintiff’s medication was changed in
16 June of 2015. Tr. 355. There are notes indicating he was waiting to get in for an
17 evaluation for his anger and hallucinations in October of 2015. Tr. 352. However,

1 notes also indicate he was doing better at school. *Id.* There are no medical
2 records from October of 2015 through January of 2017. *Id.*

3 In January of 2017, notes indicate Plaintiff was hearing voices at times. Tr.
4 364. Plaintiff reported he had been having issues with his sister, and his mother
5 did not protect him from his sister. *Id.* Ms. H reported she is “too occupied with
6 her infant daughter to be available for [Plaintiff].” Tr. 363.

7 Plaintiff was observed as having decreased eye contact, and while he was
8 distracted at times by toys or pacing, he was able to engage. Tr. 365. His
9 hallucinations were thought to be anxiety based, and his medications were
10 changed. Tr. 366. Records in 2017 demonstrate Plaintiff had several external
11 events occurring in his life, which his mother thought may have impacted his
12 behavior. Tr.367, 372.

13 During the appointments in 2017, Plaintiff was observed as having either
14 intact attention, Tr. 372, or fair attention, Tr. 374. While he appeared nervous,
15 anxious or fidgety at the beginning of some appointments, he was generally able to
16 calm himself and engage in the appointments. Tr. 372, 376, 386. In June of 2017,
17 he reported the hallucinations were “not happening that much now.” Tr. 379.

18 While Plaintiff argues there is evidence of a marked limitation in the
19 attending and completing tasks domain, the ALJ reasonably concluded that this
20 record demonstrates a lack of objective evidence of a marked limitation. Plaintiff

1 has been successful in general education. Tr. 338. While Plaintiff's mother has
2 reported Plaintiff was again put on an individual education plan (IEP) in May of
3 2017, the IEP was not provided, nor were any other school records from that time
4 period. Tr. 15. She also testified Plaintiff was only in a special resource room for
5 math, and he passed all his general education classes the prior year. Tr. 43.
6 Plaintiff has had improvement with medication, an over one-year gap in treatment,
7 and generally has effectively engaged in appointments, completed evaluations
8 without noted issues except a slow pace, and has demonstrated average test scores.
9 Tr. 304-08, 365, 372, 376, 386. While records demonstrate some abnormalities in
10 mental status examinations, Plaintiff's own interpretation of the evidence does not
11 impact the ALJ's determination.

12 The ALJ's finding that Plaintiff does not have a marked limitation in the
13 attending and completing tasks is supported by substantial evidence. Plaintiff is
14 not entitled to relief on these grounds.

15 CONCLUSION

16 Having reviewed the record and the ALJ's findings, this court concludes the
17 ALJ's decision is supported by substantial evidence and free of harmful legal error.
18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. Plaintiff's Motion for Summary Judgment, ECF No.14, is **DENIED**.

20 2. Defendant's Motion for Summary Judgment, ECF No.16, is **GRANTED**.

1 3. The Court enter **JUDGMENT in favor of Defendant** consistent with the
2 findings of this Court.

3 The District Court Executive is directed to file this Order, provide copies to
4 counsel, and **CLOSE THE FILE**.

5 DATED September 16, 2019.

6 s/Mary K. Dimke
7 MARY K. DIMKE
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20